

The United States shall not be a necessary party to the proceedings pursuant to the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Any conveyance of the land pursuant to such proceedings shall divest the United States of title to the land. Trust or restricted land given as security for a loan shall not be sold or title otherwise transferred without giving the Commissioner and the tribe of the reservation on which the land is located, or is adjacent to, written notice, at least 45 days in advance of the date of sale or proposed transfer of title.

(d) Tribes, corporations, cooperative associations, partnerships, and Indian individuals leasing trust or restricted land may, when provided in the lease and approved by the lessor and the Commissioner, mortgage their leasehold interest in the leased premises for the purpose of borrowing capital for the development and improvement of the leased premises.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.31 Chattels.**

Tribes, organizations and Indian individuals may execute mortgages on nontrust and unrestricted chattels as security without the approval of any federal official. If a lender requires, the Commissioner may approve mortgages of trust or restricted chattels given to secure guaranteed or insured loans. A tribe must adhere to the provisions of its constitution, bylaws, charter, or other organizational documents in mortgaging chattels. Mortgaged chattels shall be subject to foreclosure or sale pursuant to the terms of the mortgage or security agreement in accordance with applicable laws.

**§ 103.32 Crop mortgages.**

Crops grown on leased trust or restricted land may be mortgaged as security for a loan with the approval of the lessor and the Commissioner. Individuals owning trust or restricted land may mortgage crops grown on such land as security for a loan with approval of the Commissioner. Crops grown on trust or restricted land after severance from the land and crops grown on nontrust and unrestricted

land may be mortgaged as security without the approval of any Federal official.

**§ 103.33 Assignments of income.**

(a) A tribe or organization may execute assignments of trust income from specific sources as security for loans, pursuant to authorization in its constitution, bylaws, charter, or other organization papers. Tribes may not execute general assignments of trust income as security for loans. Assignments of trust income require approval by the Commissioner before becoming effective.

(b) Assignments of income from the trust or restricted land of an Indian individual may be executed as security for loans with the approval of the Commissioner. However, restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma is subject to the jurisdiction of Oklahoma state courts under the Act of August 4, 1947 (61 Stat. 73).

**§ 103.34 Restrictions.**

Unless the security for a loan requires approval of a federal official, no restrictions shall be placed by any official upon the security that may be given for a loan. Lenders will document any and all prior security interests of record with respect to proposed collateral. Lenders will use caution in making certain that the security taken is unencumbered. Lenders will follow the same prudent procedures as if the borrower were a non-Indian or a non-Indian organization.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.35 Release of security.**

The prime security for a loan will not be released unless the property is sold and the net proceeds applied to the loan. When approved by the Commissioner, the prime security may be released when the property is sold and the proceeds are used to purchase property of similar nature and use and of at least equal value and lien priority as the property sold and when the lender, borrower and Commissioner agree that the sale and such use of the proceeds

are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of a business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require the prior approval of the Commissioner.

**§ 103.36 Default on guaranteed loans.**

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty cer-

tificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States.

Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under